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7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 713 and 741

Fidelity Bond and Insurance Coverage for Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA)

ACTION: Proposed rule.

SUMMARY: NCUA proposes to amend its fidelity bond rule to increase the maximum allowable deductible, presently \$200,000, and change the minimum required coverage. NCUA also proposes to discontinue listing approved bonds in the rule but continue to list and update them on its website. NCUA believes these changes modernize the rule and provide flexibility while addressing safety and soundness concerns. NCUA solicits comment on whether to rescind its approval of Blanket Bond Standard Form 23, which has not changed since 1950 and is no longer widely used. NCUA solicits suggestions

on factors credit unions should consider in determining whether to raise their bond coverage above the regulatory requirements. Finally, NCUA is proposing a technical correction in the regulation that requires fidelity bond coverage for federally insured, state chartered credit unions.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site:
http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name] Comments on Proposed Rule 713, Fidelity Bonds,” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

FOR FURTHER INFORMATION CONTACT: Ross P. Kendall, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

NCUA's policy is to review regulations periodically to "update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions." Interpretive Ruling and Policy Statement (IRPS) 87-2, Developing and Reviewing Government Regulations. NCUA notifies the public about the review, which is conducted on a rolling basis so that a third of its regulations are reviewed each year. The changes in this proposed rule are the result of NCUA's staff review and public comments.

Proposed Changes

Increase in Maximum Deductible and Changes in Coverage Amounts

The rule currently provides a sliding scale, based on asset size, for both the maximum allowable deductible and coverage amounts in a fidelity bond. The maximum deductible is currently \$2,000 plus one one-thousandth of total assets, up to a maximum of \$200,000. 12 C.F.R. §713.6(a). The result of this formula is that credit unions with assets in excess of \$198 million are limited to a \$200,000 deductible. Asset size is currently the only consideration affecting the amount of the deductible.

The Board is proposing to keep the current formula based on asset size but raise the maximum deductible to \$1,000,000 for credit unions that qualify under NCUA's Regulatory Flexibility Program. 12 C.F.R. Part 742. The proposed amendment

provides that credit unions qualifying under the Regulatory Flexibility Program with assets over \$200 million will be able to purchase bonds with greater deductibles than is permitted under the current rule. The proposed maximum deductible of \$1,000,000 is reached when a qualifying credit union has assets over \$998 million.

The Board notes that many credit unions have had a substantial growth in assets since the maximum deductible was last increased in 1981, and inflation in the economy since then also supports making an adjustment. The Board believes large, well-run credit unions with substantial net worth can absorb financial risk greater than \$200,000. The Board notes, for example, that a credit union with assets of one billion dollars and sufficient net worth to qualify under the Regulatory Flexibility Program would have a net worth of at least \$90 million, which is more than adequate to absorb a million dollar deductible.

The Board invites comment on whether different criteria, such as the capital standards in NCUA's Prompt Corrective Action regulation, would be a more appropriate measure to link to the higher permissible deductible. 12 C.F.R. Part 702. In any event, the Board intends to maintain, as reflected in the proposal, the current deductible limits for credit unions that do not qualify under the additional criteria.

With regard to status changes, the proposal provides that a credit union initially meeting the criterion but subsequently failing to meet the criterion for a larger deductible must get the required coverage within thirty days. The proposal would also require that a credit union in these circumstances to give written notice to the appropriate NCUA

regional office. A credit union's notice will only need to state that its status has changed and confirm that it has secured the required coverage.

The NCUA Board believes the current risk environment for credit unions calls for increases in bond coverage at both ends of the range in asset size. Currently, the maximum required coverage is \$5 million and applies to all credit unions with assets greater than \$295 million. The rule notes that credit unions with substantial amounts of cash on hand or in transit may require greater coverage. 12 C.F.R. §713.5.

The \$5 million maximum coverage requirement has not changed since 1977 and, in addition to inflation, at least two additional factors support raising this limit. Since 1999, the number of federally insured credit unions with assets greater than \$500 million has increased from 121 to 245. During the same period, assets held by these credit unions have grown from \$129 billion to \$313 billion and now represent almost half of all assets held by all federally insured credit unions. Moreover, the rate of growth in assets for credit unions of this size is almost 80% since 1999. The Board believes prudent practice and considerations of safety and soundness dictate a higher required maximum for credit unions with assets greater than \$500 million. Accordingly, the Board proposes to increase the minimum bond coverage for credit unions with assets in excess of \$500 million: the required fidelity bond coverage must equal one percent of the credit union's assets, rounded to the nearest \$100 million, to a maximum required bond coverage amount of \$9 million.

The Board also believes that substantial risk of loss has grown for smaller credit unions. The current rule's formula allows credit unions with assets of less than \$4 million to have minimum bond coverage of less than \$250,000. 12 C.F.R. §713.5(a). The Board proposes that, for smaller credit unions, they should have bond coverage of at least \$250,000 or their total assets, whichever is less.

The Board believes increasing the coverage requirement in the regulation for smaller credit unions will not be a significant cost for smaller credit unions but is important because of increasing safety and soundness challenges for them. Of the approximately 2,500 credit unions with assets under \$4 million, the Board understands most already have bonds equal to or greater than \$250,000 and many have coverage in the range of \$500,000 to \$1 million. Premiums depend on various factors, including geographic location and level and type of activities. The Board believes increases in premium costs for smaller credit unions are incrementally small as compared to the significant increase in coverage they can get. For example, the Board understands that a small, east coast credit union, currently with a \$100,000 bond costing about \$600 could increase coverage to \$250,000 for about an additional \$100.

Smaller credit unions are in many ways uniquely vulnerable to fraud that can, given advances in technology, quickly produce losses that exceed their assets. Since year-end 1993, the NCUA has experienced thirteen instances in which losses to the National Credit Union Share Insurance Fund from insolvent credit unions have exceeded the credit union's stated assets at the time of liquidation, even after recovery of the full bond

amount. Accordingly, the Board proposes to increase the minimum required coverage for all credit unions to the lesser of \$250,000 or its total assets.

The changes reflected in the proposed rule are consistent with the Board's ongoing efforts to reduce regulatory burden while preserving necessary requirements to assure credit union safety and soundness. The Board does not believe the increased coverage requirements will add significantly to the premium costs. The Board also anticipates that the proposed change in the deductible ceiling will result in well-run credit unions being able to get fidelity bond coverage at lower cost.

Listing of Approved Bond Forms

The Board proposes to discontinue listing approved fidelity bonds by form number and offering company but continue to list and update this information on the agency's website. 12 C.F.R. §713.4. The Board believes that a regulation is not the most efficient or effective way to notify credit unions about changes regarding which bonds are approved. Changes in the marketplace such as mergers and acquisitions affect the accuracy of the list of companies. For example, NCUA has approved bond forms offered by the Cincinnati Insurance Company and the Chubb Group but that information has not as yet been incorporated in the rule by an amendment.

Since the rule was last amended in 1999, NCUA has significantly enhanced the usefulness of its website and credit unions have come to rely increasingly on the web as a source of information. The Board believes the agency's web site is a flexible, timely,

and accurate medium for information about approved bonds for credit unions. The Board proposes, therefore, to eliminate the listing of approved bond forms and companies from the rule but to continue to provide the information on the agency's website (www.ncua.gov). The proposed amendment changes §713.4 of the rule so that it refers to the website but includes a statement that anyone without access to the web can obtain a current listing of approved bond forms by contacting NCUA directly. The amendment would retain the current language in the rule requiring prior approval of the Board for bond forms not listed on the web or departing from the described coverages.

Technical Amendment

The fidelity bond requirements in our rules apply to federally insured, state chartered credit unions. 12 C.F.R. §741.201. The proposed rule makes a technical correction to correct a cross-reference in subsection (b) of this rule to a provision in the corporate credit union rule.

Continued Viability of Standard Blanket Bond Form 23

The current rule lists Credit Union Blanket Bond Standard Form 23 of the Surety Association of America as a bond that credit unions may use without obtaining prior NCUA approval. 12 C.F.R. §713.4(a). This bond form was last revised over fifty years ago. The Board is aware of the dramatic changes in both the credit union and the fidelity bond businesses that have occurred since 1950 and questions whether this form of blanket bond has continued relevance and viability. The Board solicits comment on

whether to rescind its approval of this bond form and is particularly interested in hearing from any credit union that might still have this bond.

Additional Factors to Consider When Considering Additional Coverage

The current rule notes that credit unions should consider additional coverage, beyond the coverage the regulation requires, if their circumstances warrant; the regulation offers the amount of cash on hand and amount of cash in transit as examples. 12 C.F.R. 713.5(b). The Board believes it may be helpful to credit unions for the regulation to highlight other circumstances that credit unions should consider when considering whether to get additional coverage. Commenters should note this subsection in the regulation does not set out regulatory requirements but only suggests factors credit unions should consider when adjusting their coverage to their circumstances. The Board welcomes comments on additional examples of activities the regulation could highlight, such as funds transfer operations, that may present additional, potential risks because of new programs that are available.

REGULATORY PROCEDURES

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. NCUA considers credit unions having less than ten million dollars in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87-2 as amended by IRPS 03-2. The proposal would require credit

unions with assets under \$4 million to obtain higher fidelity bond coverage than is currently required. The NCUA believes, based on discussions with members of the industry, that the increase in premium to obtain the higher coverage will be, relative to the premium already required, insignificant. The NCUA has determined and certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that an RFA analysis is not required. NCUA solicits comment on this analysis and welcomes any information that would suggest a different conclusion.

Paperwork Reduction Act

A. Request for Comment on Proposed Information Collection

In accordance with the requirements of the Paperwork Reduction Act of 1995, NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Simultaneous with its publication of this proposed amendment to Part 713, NCUA is submitting a copy of the proposed rule to the Office of Management and Budget (OMB) along with an application for an OMB control number.

The proposed amendment would require some federally insured credit unions to monitor their asset size and status under NCUA's Regulatory Flexibility Program to ensure their continued eligibility for the higher bond deductible permissible under the revised regulation. These federally insured credit unions would also be required to notify their bond carrier and their regulator in the event their status changes and they

become no longer eligible to have the higher deductible. Credit unions that no longer qualify for the higher deductible must obtain revised coverage within thirty days of their change in status.

NCUA estimates it will take an average of one hour for a credit union to provide notice to both its bond carrier and its regulator of its changed status. NCUA notes that credit unions with assets greater than \$200 million comprise approximately seven percent of all federally insured credit unions; of these, 266 presently qualify for participation in the Regulatory Flexibility program. Based on NCUA's information, on average less than two percent of all Regulatory Flexibility program eligible credit unions fall out of eligibility annually.

Thus, the burden associated with this collection of information may be summarized as follows:

Number of Respondents: 5

Estimated Time per Response: 1 hour

Notice to regulators: 1 hour x 5 credit unions = 5 hours

Estimated Total Annual Burden: 5 hours

The Paperwork Reduction Act and OMB regulations require that the public be provided an opportunity to comment on the paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. The NCUA Board invites comment on: (1) whether the paperwork requirements are necessary; (2) the accuracy

of NCUA's estimates on the burden of the paperwork requirements; (3) ways to enhance the quality, utility, and clarity of the paperwork requirements; and (4) ways to minimize the burden of the paperwork requirements.

Comments should be sent to: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20503; Attention: Joseph Lackey, Desk Officer for NCUA. Please send NCUA a copy of any comments submitted to OMB.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999 - - Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Parts 713 and 741

Credit unions, Insurance, Reporting and record keeping requirements.

By the National Credit Union Administration Board on May 19, 2005.

Mary F. Rupp

Secretary of the Board

Accordingly, NCUA proposes to amend 12 CFR parts 713 and 741 as follows:

Part 713 – Fidelity Bonds and Insurance Coverage for Federal Credit Unions

1. The authority citation for part 713 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786.

2. Revise §713.4 to read as follows:

§713.4 What bond forms may be used?

(a) A current listing of basic bond forms that may be used without prior NCUA Board approval is on NCUA's web site, www.ncua.gov. If you are unable to access the NCUA web site, you can get a current listing of approved bond forms by contacting NCUA's Public and Congressional Affairs Office, at (703) 518-6330.

* * * * *

3. Revise §713.5 to read as follows:

§713.5 What is the required minimum dollar amount of coverage?

(a) The minimum required amount of fidelity bond coverage for any single loss is computed based on a federal credit union's total assets.

Assets	Minimum Bond
\$0 to \$4,000,000	Lesser of total assets or \$250,000
\$4,000,001 to \$50,000,000	\$100,000 plus \$50,000 for each million or fraction thereof over \$1,000,000
\$50,000,000 to \$500,000,000	\$2,550,000 plus \$10,000 for each million or fraction thereof over \$50,000,000, to a maximum of \$5,000,000
Over \$500,000,000	One percent of assets, rounded to the nearest hundred million, to a maximum of \$9,000,000

* * * * *

4. Revise §713.6 to read as follows:

§713.6 What is the permissible deductible?

(a)(1) The maximum amount of allowable deductible is computed based on a federal credit union's asset size, as follows:

Assets	Maximum Deductible
\$0 to \$100,000	No deductible allowed

\$100,001 to \$250,000	\$1,000
\$250,000 to \$1,000,000	\$2,000
Over \$1,000,000	\$2,000 plus 1/1000 of total assets up to a maximum of \$200,000; for credit unions that qualify for NCUA's Regulatory Flexibility Program in part 742, the maximum deductible is \$1,000,000.

* * *

(c) A credit union that becomes ineligible to have a deductible in excess of \$200,000 must, within 30 days of becoming ineligible for the higher deductible, obtain the required coverage and notify the appropriate NCUA regional office in writing of its changed status and confirm that it has obtained the required coverage.

Part 741 – Requirements for Insurance

1. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781-1790, and 1790d.

2. Revise §741.201 to read as follows:

§741.201 Minimum fidelity bond requirements.

* * *

(b) Corporate credit unions must comply with §704.18 of this chapter in lieu of part 713 of this chapter.